



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0007]**

**RIN 1625-AA87**

### **Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the existing security zone regulations for the Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West Florida. The amendments will create a new section for Sector Key West security zones; clarify when the Port Everglades fixed security zones will be in effect; modify and lengthen a portion of one Port Everglades fixed security zone; and update language and definitions throughout the regulation. The security zones are intended to protect the public and ports from potential subversive acts.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0007 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Samuel Rodriguez-Gonzalez, Sector Miami Waterways

Management Division, U.S. Coast Guard; telephone (305) 535-4307, email

[Samuel.Rodriguez-Gonzalez@uscg.mil](mailto:Samuel.Rodriguez-Gonzalez@uscg.mil); or BMC Greg Bergstrom, Sector Key West

Waterways Management Division, U.S. Coast Guard; telephone (305) 292-8772, email

[Greg.C.Bergstrom@uscg.mil](mailto:Greg.C.Bergstrom@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard published a notice of proposed rulemaking<sup>1</sup> (NPRM) on September 16, 2016. The comment period closed on November 15, 2016. The Coast Guard received two comments. Based on the comments received we made minute changes to specific coordinates of the proposed security zone listed in § 165.760(b) (3) to provide a larger security “standoff” distance. We issued a supplemental notice of

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<sup>1</sup> The NPRM was issued under docket number USCG-2016-0327 (see 81 FR 63728).

proposed rulemaking<sup>2</sup> (SNPRM) on February 7, 2019 to provide the public with an opportunity to comment on these supplemental changes. The comment period on the SNPRM closed on March 11, 2019. We received two comments on the SNPRM, which are discussed below.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The purpose of this rule is to establish separate regulatory authority for Sector Key West, clarify when the Port Everglades fixed security zones will be in effect, modify and lengthen a portion of one of the Port Everglades fixed security zones, update language throughout the regulation for administrative reasons, and to protect the public and Ports from potential subversive acts.

### **IV. Discussion of the SNPRM and the Rule**

As noted above, we received two comments on the SNPRM. The first commenter was in support of the security zone, but noted incorrect terms for landmarks used in the preamble. This commenter pointed out that the SNPRM's preamble incorrectly referred to Berth 7 as the southern point of the fixed security zone encompassing the Port Everglades Turning Basin and cruise and petroleum berths. However, the commenter noted that the SNPRM's regulatory text in § 165.760(b)(3), correctly referred to the northern tip of Berth 22. The regulatory text that will appear in the final rule has the correct wording and uses latitude and longitude designations to avoid any confusion.

The same commenter noted that while the moving security zone would only apply to passenger vessels and other vessels carrying cargoes of a particular hazard, or liquefied hazardous gas, it might be necessary to extend that to other vessels at higher Maritime

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<sup>2</sup> The SNPRM was issued under docket number, USCG-2018-0007 (see 84 FR 2479).

Security (MARSEC) levels using other existing Captain of the Port (COTP) authorities. The security zone discussed in this rule is a fixed security zone, and does not contain a moving security zone. At higher MARSEC levels, Port Everglades will increase their security measures accordingly to mitigate security vulnerabilities and ensure the safety of all vessels.

The second commenter asked how the Coast Guard would deal with the increase in patrols, and wanted to know if the Coast Guard is equipped to handle the extra workload. The Coast Guard works closely with Broward County Sheriff's Office to ensure the security zone is enforced in Port Everglades. Increased vessel traffic has been managed with success, and has not been a concern. The updated fixed security zone extends further south than the security zone it is replacing, but that is not expected to result in more patrols. The longer security zone will increase the geographic area that law enforcement vessels will patrol; however, the patrols are not expected to be conducted more often as a result of the updated security zone.

We note we erroneously mentioned in the preamble of the SNPRM that we were going to revise the regulatory text by using the names of state parks when referencing certain coordinates. It was determined that the names of the state parks did not add any clarity to the regulatory text; therefore, we did not propose this change after all.

With this final rule, we are finalizing the regulatory text proposed in the SNPRM without any further revisions.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the following reasons: (1) persons and vessels would still be able to operate in waters surrounding security zones; (2) the permanent fixed security zone encompassing Port Everglades from Mid-Port to North-Port is within the natural boundaries of the Port and is limited in size; (3) notification of the security zones will be made to the local maritime community via posted signs and Broadcast Notice to Mariners on VHF-FM marine channels 16 when applicable; and (4) persons and vessels may operate within the security zone if authorized by Captain of the Port Miami, Captain of the Port Key West, or a designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: people and the owners or operators of vessels intending to transit or remain within the security zone(s) when they are in effect. For reasons discussed in section V. A. Regulatory Planning and Review above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending security zones. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Memorandum for the Record (MFR) supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS**



## AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.760 to read as follows:

**§ 165.760 Security Zones; Port of Palm Beach, Port Everglades, and Port of Miami, Florida.**

(a) *Definitions.* (1) As used in this section, *passenger vessel* is a vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(2) As used in this section, a *vessel carrying cargoes of particular hazard* is defined in 33 CFR part 126 and a *vessel carrying liquefied hazardous gas (LHG)* is defined in 33 CFR part 127.

(b) *Locations.* The following areas are security zones (all coordinates are North American Datum 1983):

(1) *Fixed and moving security zones around vessels in the Port of Palm Beach, Port Everglades, and Port of Miami, Florida.* Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) during transits entering or departing the Port of Palm Beach, Port Everglades, or Port of Miami. These moving security zones are activated when the subject vessel passes: Lake Worth Lighted Buoy LW, at approximate position 26°46'22"N, 80°00'37"W, when entering the Port of Palm Beach; passes Port Everglades Lighted Buoy PE, at approximate position 26°05'30"N, 080°04'46"W, when entering Port Everglades; and passes Miami Lighted Buoy M, at approximate position

25°46'05"N, 080°05'01"W, when entering Port of Miami. These moving security zones remain active whenever a passenger vessel, vessels carrying cargoes of particular hazard, or vessels carrying LHG is underway westward of the above mentioned buoys. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying LHG, while the vessel is moored in the Port of Palm Beach, Port Everglades, or Port of Miami, Florida. Persons and vessels may pass within 100 yards of a moored passenger vessel, vessel carrying cargoes of particular hazard, or vessel carrying LHG that is moored within or alongside a Federal channel as long as the passage occurs outside of the on scene law enforcement vessel. Persons and vessels shall pass north of the on scene law enforcement vessel when north of the Port of Miami, south of the on scene law enforcement vessel when south of the Port of Miami and east of the on scene law enforcement vessel in Port Everglades.

(2) *Fixed security zone in Port of Miami, Florida.* A fixed security zone encompasses all waters between Watson Park and Star Island from the MacArthur Causeway south to Port of Miami. The western boundary is formed by an imaginary line from points 25°46'45"N, 080°10'52"W, northwest to 25°46'46"N, 080°10'54"W, northeast to 25°46'53"N, 080°10'50"W, and extending northeast ending at Watson Island at 25°47'00"N, 080°10'40"W. The eastern boundary is formed by an imaginary line approximately 100 yards west of the Fisher Island Ferry terminal, in approximate position 25°46'20"N, 080°09'07"W, extending southwest across the Main Channel to Port of Miami, at 25°46'16"N, 080°09'11"W. The fixed security zone is in effect when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying LHG, enter or moor within this zone.

(i) When the security zone is in effect, persons and vessels shall not enter or transit the security zone along the Miami Main Channel unless authorized by Captain of the Port of Miami or a designated representative.

(ii) Persons and vessels may transit the Miami Main Channel when only one passenger vessel, one vessel carrying cargoes of particular hazard or one vessel carrying LHG is berthed.

(iii) Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in Port Everglades.* A fixed security zone encompasses Mid-Port to North-Port in Port Everglades and includes all waters west of an imaginary line starting at the southernmost point 26°05'24"N, 080°06'57"W, on the northern tip of Berth 22, to the northernmost point 26°06'01"N, 080°07'09"W, near the west side of the 17th Street Bridge and then move west to the northwestern most point at 26°06'01"N, 080°07'10" W. An additional fixed security zone encompasses the waters west of the Intracoastal Waterway to the pier face of Port Everglades from Mid-Port south to the northern tip of the Dania Cut-Off Canal and includes the waters westward of the line connecting the following points to the pier face of Port Everglades: starting at 26°05'25"N, 080°06'58"W, on the northern tip of Berth 22 at Mid-Port, to a point directly east along the Intracoastal Waterway, 26°05'25"N, 080°06'54"W, then southeast along the Intracoastal Waterway to 26°05'10"N, 080°06'49"W, then southwest along the Intracoastal Waterway to 26°04'43"N, 080°06'53"W, then south along the Intracoastal Waterway to 26°03'54"N, 080°06'52"W, and then west to the Port Everglades pier face just north of the Dania Cut-Off Canal at 26°03'54"N, 080°06'55"W.

(i) Persons and vessels may transit the Intracoastal Waterway; however, persons and vessels are not authorized to enter the fixed security zone westward of the Intracoastal Waterway without authorization from Captain of the Port Miami or a designated representative. On occasion, a passenger vessel, vessel carrying cargoes of particular hazard, or vessel carrying LHG may moor and encroach into the Intracoastal Waterway. When this occurs, persons and vessels shall transit the Intracoastal Waterway east of the on scene law enforcement vessel.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels near the security zone must follow the orders of the Captain of the Port or the designated representative.

(iii) Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(c) *Regulations.* (1) Prior to commencing any movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying LHG is encouraged to make a security broadcast on VHF Marine Band Radio Channel 16 (156.8 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33, entry into these zones is prohibited, except as authorized by the Captain of the Port of Miami or a designated representative. Vessels such as pilot boats, tug boats, and contracted security vessels may assist the Coast Guard Captain of the Port by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public of the security

zone via signs or by Marine Safety Radio Broadcasts on VHF Marine Band Radio Channel 16 (156.8 MHz) when applicable.

(3) Persons and vessels desiring to enter or transit the fixed or moving security zones may contact the Captain of the Port Miami at (305) 535-4472 or on VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or the designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this section for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety, or environmental safety.

3. Revise § 165.761 to read as follows:

**§ 165.761 Security Zones; Port of Key West, Florida.**

(a) *Definitions.* (1) As used in this section, *passenger vessel* is a vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(2) As used in this section, a *vessel carrying cargoes of particular hazard* is defined in 33 CFR part 126 and a *vessel carrying liquefied hazardous gas (LHG)* is defined in 33 CFR part 127.

(b) *Location.* The following area is a security zone: Fixed and moving security zones around vessels in the Port of Key West, Florida. A moving security zones is established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) during transits entering or departing the

Port of Key West, Florida. A moving security zones is activated when the subject vessel passes Key West Entrance Lighted Whistle Buoy KW, at approximate position 24°27'26"N, 081°48'00"W. This moving security zone remains active whenever a passenger vessel, vessels carrying cargoes of particular hazard, or vessels carrying LHG is underway westward of the above mentioned buoys. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying LHG, while the vessel is moored in the Port of Key West, Florida.

(c) *Regulations.* (1) Prior to commencing any movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying LHG, is encouraged to make a security broadcast on VHF Marine Band Radio, Channel 16 (156.8 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33, entry into these zones is prohibited except as authorized by the Captain of the Port of Key West or a designated representative. Vessels such as pilot boats, tug boats, and contracted security vessels may assist the Coast Guard Captain of the Port by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public of the security zone via signs or by Marine Safety Radio Broadcasts on VHF Marine Band Radio, Channel 16 (156.8 MHz) when applicable.

(3) Persons and vessels desiring to enter in, transit through, anchor in, or remain within the fixed or moving security zones may contact the Captain of the Port Key West at (305) 292-8727 or on VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to

transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or the designated representative.

(4) The Captain of the Port Key West may waive any of the requirements of this section for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety, or environmental safety.

Dated: June 11, 2019.

P. J. Brown  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District.

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